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STATE FOR AF/S JEANNE MALONEY
PARIS FOR D'ELIA

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SUBJECT: MALAWI LAND REFORM STALLED

LILONGWE 00001018 001.2 OF 003

SUMMARY

[¶11.](#) Malawi's informal system of land administration continues to hinder economic development. A land reform program adopted last year proposes across-the-board reforms, but resistance from local chiefs is stiff. There has been some progress putting a land bureaucracy in place, but the current GOM has shown little enthusiasm for pushing the reforms. The Mutharika administration's manifest political weakness makes land reform look very unlikely in the near future, despite some recognition of its potential economic benefits. End summary.

Land Use: Locked in the Basement

[¶12.](#) As Malawi watches yet another food crisis unfold, both the government and its development partners are asking why this keeps happening, and why Malawi's economy remains stalled. One of the many answers to this complicated question is the absence of a modern land policy. Malawi's failure to push through a land reform program has kept the land and the people who work it locked in the world's economic basement. A legacy system of traditional and colonial land use has kept land from being used productively because it has forestalled agricultural reform, land consolidation, and economic specialization. As in other parts of Africa, the traditional land system has also kept out a formal land registry, which, by allowing landowners to leverage their real property, would inject badly needed capital into the economy.

Colonial and Traditional Legacies

[¶13.](#) The land problem in Malawi has two principal dimensions. The first, higher-profile dimension, is a legacy of the colonial era. In common with other southern African countries, Malawi inherited a rural settlement structure in which foreign farmers held some of the most fertile and well-watered lands. The concentration of these large freehold estates in the Southern Region, and subsequent expansion of estate agriculture after independence, skewed the distribution

of freeholds, particularly in the heavily populated south. This disproportionate ownership (16 percent of Malawi's arable land is under tea, tobacco, and sugar estates) has been a source of increasing friction between the estates and the local population because of population pressure on the non-estate lands. The scattered instances of land encroachment in Malawi have occurred mostly in the southern districts.

¶4. The second dimension is both subtler and more damaging: the persistent role of traditional chiefs in administering "customary" land has prevented a formal system of titles and land tenure. While the public technically owns all except freehold land, local village headmen and chiefs control the land in their areas. They award use of the lands according to custom and whim. The system is not backed by any formal registry, and tenure rights are a continuing problem, particularly for widowed and divorced women and their families. The chiefs' control over land is their main source of income and authority, which they are loathe to relinquish; its informal nature prevents consolidation through sale, financial leveraging (borrowing against the land for improvements), and agricultural innovation (owing to the small size of individual holdings).

Malawi's Land Reform Program

¶5. Malawi has operated without a comprehensive land policy since independence. A land reform process started with a presidential Commission in 1996, and the government drafted and approved a national land policy (NLP) in January 2002. The NLP's goal is to provide a framework for land administration that will ensure tenure security and equitable access to land. Shortly after approving the NLP, the government undertook a land reform

LILONGWE 00001018 002.2 OF 003

program, based on the NLP. Implementation of the land reform program has depended on the fleeting availability of outside funding. The initial efforts over the past three years have focused on a few thematic areas: public awareness; land access, tenure security and productivity; customary land reform; capacity building; and land law reform.

Public Awareness

¶6. The public awareness strategy seeks to create grassroots awareness about the National Land Policy and its implications for people's livelihoods. Completed work includes stakeholder meetings with civil society, traditional authorities, and news media. Yet to be done are production of marketing materials, capacity building at district and regional levels, and formulation of participatory drama and radio listening clubs. In the absence of further DFID financing, no money is available to complete this work.

Land Access, Tenure Security and Productivity

¶7. The goal under this theme is to decentralize land administration and facilitate land acquisition among the landless and land-poor in Mulanje, Thyolo, Mangochi and Machinga Districts (i.e., in the midst of the large southern estates). Funded mainly by the World Bank, the strategy seeks to set up a "willing buyer/willing seller" market to buy idle estate lands, as well as provide a local point of presence for land administration authorities. Ultimately, this project aims to improve

access to land for about 15,000 rural poor in the pilot districts. At this writing, the first few transactions have taken place, and resettlement is in process. Other land buys are awaiting successful resettlement of the first groups.

Customary Land Reform

¶8. This project is to regularize customary land tenure, improve access and encourage sustainable use. The African Development Bank has provided funding for the project's preparatory activities.

¶9. Customary land rights are closely connected to ethnic identity and to traditional authorities. Access to land is reached through kinship in a genealogical map, with families and individuals being allocated exclusive fee simple usufruct in perpetuity subject only to effective utilization. However, the fundamental ownership, though technically the public's, in practice remains with traditional authorities. The NLP proposes to consolidate customary land rights so that individuals have a private legal right to the land under their cultivation.

Capacity Building

¶10. The capacity building strategy is one of the most important components of the reform program. This activity seeks to strengthen institutional capacity for implementing the program. This activity will establish a Technical Land Services Secretariat (TLSS), train various cadres of land administration staff, establish a measurement and evaluation system, and establish a computerised financial management system. Project implementation has started with training 14 surveyors and 60 certified land administrators.

Land Law Reform

¶11. Land administration and management are governed by several key statutes developed before and soon after independence (1964). These laws are now badly out of date, and the NLP recommended a review of the legal and institutional structures to suit current constitutional requirements and democratic principles. The strategy is

LILONGWE 00001018 003.2 OF 003

to review the existing land legislation and formulate a new legislative framework that aligns with the Constitution and with international law. A Special Law Commission on Land Law Reform has prepared a draft land law report and begun regional consultations. The commission plans to complete consultations and submit a final draft to Parliament in February or March 2006.

Comment: Lack of Enthusiasm and Political Muscle

¶12. Neither the past nor the current administration has been enthusiastic about pushing the land reform agenda, and the government has inched forward only when an outside donor has provided funding. Technocrats within the government, including senior officials in the lands ministry, are often well versed in the arguments for land reform, and indeed some of them have quoted Hernando de Soto to us. Given the limited resources they have to work with, they have set up an admirable program and made a good, though small, start. On the political level, though, land reform is entirely problematic.

¶13. The NLP proposes to consolidate customary land rights to give individuals a private legal right to the land under their cultivation. Local chiefs continue to resist this move, because land is the foundation of their power, and they are jealous of prerogatives that will necessarily dwindle in the face of progress. Because traditional authorities are the base-level power brokers in Malawi, politicians are understandably reluctant to force the issue. A powerful president with strong parliamentary support would have a hard time selling land reform in Malawi; the current president, who is struggling against a hostile parliamentary opposition, is unlikely to make a serious effort. Up to now, he has shown no signs of wanting to.

EASTHAM